



Department of Toxic Substances Control



Linda S. Adams
Secretary for
Environmental Protection

Maureen F. Gorsen, Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806

Arnold Schwarzenegger
Governor

June 14, 2006

Mr. Mark A. Kohorst
National Electrical Manufacturer's Association
Suite 1752
1300 North 17th Street
Rosslyn, Virginia 22209

Dear Mr. Kohorst:

Thank you for your letter regarding exemptions from the ban on the sale and distribution of mercury switches and relays in California. Health and Safety Code section 25214.8.4 establishes a number of exemptions from the ban and several of these exemptions are self-implementing. The exemption found in section 25214.8.5 is not self-implementing and requires the approval by the California Department of Toxic Substances Control (DTSC). I have attached an exemption matrix to help you understand the exemptions; which exemptions are self-implementing, which exemptions require notification to DTSC, and which exemptions require DTSC approval.

Health and Safety Code section 25214.8.4(e) addresses refurbished medical imaging or therapy equipment. The exemption is self-implementing but a notification containing specified information must be submitted to DTSC prior to operating under that exemption.

An exemption request under Health and Safety Code section 25214.8.5 must be processed and approved or denied within 180 days after the request is received and deemed complete by DTSC. Prior to detailed consideration of an exemption request and as part of the completeness determination, an agreement must be signed by DTSC and the applicant wherein the applicant agrees to reimburse DTSC for costs involved for researching, processing, and responding to the exemption request. I have attached a model agreement for your information.

To apply for an exemption under Health and Safety Code section 25214.8.5, an applicant uses the "APPLICATION FOR EXEMPTION TO MERCURY-ADDED PRODUCT PHASE-OUT" published by the Interstate Mercury Education and Reduction Clearinghouse (IMERC). The application is downloaded from the IMERC website, <http://www.newmoa.org/prevention/mercury/imerc.cfm>, and the completed application and supporting documentation is submitted to IMERC for coordination among the

Mr. Mark A. Kohorst
June 14, 2006
Page 2

IMERC member states. IMERC then forwards the application and supporting documentation to the affected member states including California and each state makes an individual decision to approve or deny the exemption.

Upon receipt of an exemption request, DTSC will immediately contact the applicant to discuss the request and any additional data needed to assess the request and will forward a reimbursement agreement. DTSC then will work as rapidly as workload and data availability allows with the goal of approving or denying the request well before the 180 day statutory deadline. At this time, DTSC is working to respond to the previously submitted applications submitted to IMERC prior to enactment of California's ban and expects to respond to all of these requests prior to the effective ban date. Note that the timeliness of the applicant's response to the reimbursement agreement and to requests for any additional needed supporting data also affects the time needed to respond to an exemption request.

There is no provision in State law that would "stay" the ban while DTSC is considering the request. If DTSC cannot complete an exemption request prior to the ban date or if the request is submitted after the ban date, the product must not be sold in California until and unless the exemption request is approved.

I hope that this letter answers your questions about the exemption process from the State's ban on mercury-added equipment. If you need further information, please contact Mr. Ron Ohta of my staff at (916) 324-5192 or email him at rohta@dtsc.ca.gov.

Sincerely,

ORIGINAL SIGNED

Sherri Lehman, Chief
Regulatory and Technical Development Branch
Regulatory and Program Development Division
Hazardous Waste Management Program

Attachments:

1. Matrix of Mercury-added Product Ban Exemptions
2. Model Reimbursement Agreement

Item(s)	Shall Not Sell, Offer to Sell, or Distribute for Promotional Purposes Effective Date	California Health and Safety Code Section(s)	Exemption Description	Self-Implementing
Mercury-added thermostat	1/1/2006	25214.8.2(a) or (b)	Will be used for manufacturing or industrial purposes, or will be used by blind or visually impaired person.	Yes
Barometer Esophageal dilator Bougie tube Gastrointestinal tube Flow meter Hygrometer Psychrometer Manometer Pyrometer Sphygmomanometer Thermometer	7/1/2006	25214.8.3(b)	Sale is exempt when the use is required under a federal law or federal contract specification or if the only mercury-added component in the product is a button cell battery.	Yes
Mercury switch or relay	7/1/2006	25214.8.4(b) (1) or (b)(2) 25214.8.4(c)	When replacing a switch or relay that is a component in a larger product in use prior to 7/1/2006 and the larger product is used in manufacturing, or the switch or relay is integrated in and not physically separate from other components of the larger product. Sale is exempt if use is required under federal law or federal contract specification.	Yes

Item(s)	Shall Not Sell, Offer to Sell, or Distribute for Promotional Purposes Effective Date	California Health and Safety Code Section(s)	Exemption Description	Self-Implementing
		25214.8.4(d)	Switch or relay contains less than one milligram of mercury, and the manufacturer meets specified notification and certification requirements.	Yes, but manufacturer must notify and certify.
		25214.8.4(e)	Resale of a refurbished imaging and therapy system used for medical diagnostics that includes a switch or relay. The manufacturer must meet specified notification and certification requirements.	Yes, but manufacturer must notify and certify.
Product containing mercury switch or relay	7/1/2006	25214.8.5	DTSC may grant an exemption for the sale of a product or use for which there is no technically feasible non-mercury alternative available at a reasonable cost.	No, manufacturer requests via cost reimbursement agreement.

EXHIBIT A
(Scope of Work for Reimbursement Agreement)

SCOPE OF WORK

- A. [Company name]. (Applicant) agrees to reimburse the Department of Toxic Substances Control (DTSC) for DTSC's costs incurred in providing review of the Applicant's request for [check one of the following] an initial or a renewed exemption from Health and Safety Code section 25124.8.4 for a product containing a mercury float switch (the Product) pursuant to Health and Safety Code section 25214.8.5(b) (the Application). The details of the Scope of Work are described below under the "Scope of Work" and incorporated by this reference.
- B. The Project Coordinators during the term of this Agreement will be:

<i>State Agency:</i>	<i>Applicant:</i>
Department of Toxic Substances Control	[Company Name]
Ron Ohta Regulatory & Technical Development Branch 1001 I Street, P.O. Box 806 Sacramento, CA 95812	Contact Name Address Address email
Phone: (916) 324-5192	Phone: (xxx) xxx-xxxx
Fax: (916) 327-4495	Fax: (xxx) xxx-xxxx

SCOPE OF WORK

The scope of work to be provided by DTSC under the terms of this Agreement is the review of the Application for a mercury float switch manufactured by Rule Industries. This review includes work related to DTSC's decision to grant or deny the Application.

DTSC's activities will include but not be limited to:

- Provide technical consultation and review of the Application;
- Provide decision on whether DTSC grants or denies the Application; and
- Other Application-related communication or coordination efforts.

Any significant modification to the Application(s) previously submitted or previously discussed may be considered a new project. This Agreement must be amended in writing to address any expanded scope of work.

EXHIBIT B
(Budget Detail for Reimbursement Agreement)

BUDGET DETAIL AND PAYMENT PROVISIONS:

- A. Attached to this Agreement and included by reference as the Agreement's Budget is DTSC's estimate of the costs to perform its duties under this Agreement. DTSC used fully-loaded average hourly rates for each personnel classification projected to be needed for performing its duties under this Agreement in developing the estimate. The Applicant understands that it will be billed for DTSC's actual costs and agrees to fully reimburse DTSC for these costs up to the total amount of this Agreement. DTSC will invoice the Applicant quarterly. If the Applicant does not pay an invoice within 60 days of the date of the invoice, DTSC will charge interest in accordance with the requirements of Health and Safety Code section 25360.1. The Agreement's Budget and total amount may be modified by mutual agreement in writing if DTSC's actual costs of performing its duties under this agreement will exceed the original cost estimate.
- B. The Applicant agrees to advance to DTSC an amount of money based upon DTSC's estimate of the costs it may incur in performing its duties under this Agreement. The amount of the advance is based upon DTSC's costs of services for six months, or for the entire amount of the agreement, if less than six months.
- C. Upon execution of this Agreement, Applicant shall remit to DTSC an amount not less than \$1,000 as advance funding for work to be performed by DTSC. The total amount of this agreement is \$2,743.40. Applicant shall submit all payments to:

Department of Toxic Substances Control
Accounting
1001 I Street, 21st Floor
P.O. Box 806
Sacramento, California 95812-0806
Attention: Ms. Karen Poon

- D. Copies of checks and letters transmitting such checks shall be sent simultaneously to DTSC's project coordinator.
- E. The advance payment shall be retained in the Applicant's Account. DTSC shall hold the advance payment until the Agreement is completed or terminated. Any remaining charges shall then be applied against the advance, and any unused advance payment will be refunded within 120 days of the completion of the project.
- F. If the Applicant cancels the Agreement, Applicant agrees to pay DTSC a minimum fee of \$1,000 out of the advance, regardless of the amount of work or services performed by DTSC under the terms of the agreement. If DTSC incurs more than \$1,000.00, Applicant will be responsible for the actual direct and indirect costs incurred or encumbered by DTSC up to the date "notice of cancellation" is received by DTSC, without any additional fee.

xxx
Agreement No. xx-xxxxxx
Exhibit B Page 2 of 2

- G. The amount advanced by Applicant may be modified by mutual agreement in writing should the services provided by DTSC exceed its original estimated costs. Upon execution of an amendment to the Scope of Work which increases the original cost, applicant agrees to pay any additional advance payment to DTSC for such newly agreed upon work.
- H. Any dispute concerning DTSC's costs incurred pursuant to this Agreement is subject to the dispute resolution procedures as established pursuant to Health and Safety Code section 25269.2. DTSC reserves its right to recover unpaid costs under applicable state and federal laws.

COST ESTIMATE

TASKS/MILESTONES	HSS	Sr. HSS	Sup. HSS I	Sup. HSS II	Counsel	Other Support	TASK HOURS
Reviewing the application for mercury-added product ban exemption, and preparing decision documents	16	2	1	1	1	1	22
SUBTOTAL OF STAFF HOURS	16	2	1	1	1	1	22
LABOR RATES	\$109	\$126	\$126	\$145	\$174	\$53	
SUBTOTAL LABOR	\$1744	\$252	\$126	\$145	\$174	\$53	\$2,494.00
10% CONTINGENCY	\$174.40	\$25.20	\$12.60	\$14.50	\$17.40	\$5.30	\$249.40
TOTAL							

EXHIBIT D
(Special Terms and Conditions for Reimbursement Agreement)

SPECIAL TERMS AND CONDITIONS

- A. Nothing in this Agreement shall limit the types, classifications or number of staff who may perform work pursuant to this Agreement and for whom DTSC may bill Applicant, subject to the provisions as set forth in Exhibit B.
- B. DTSC or Applicant may terminate this Agreement without cause upon giving the other party 30-day advance written notice. Applicant agrees to pay DTSC any costs incurred by DTSC prior to termination of the Agreement. DTSC shall not be liable for any loss or damages sustained by Applicant as a result of the termination of this Agreement.
- C. This Agreement shall not be considered effective until it is signed by both parties, and if necessary, approved by the Department of General Services.